IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5591 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHANJIBHAI NANJIBHAI NASIT - Petitioner(s)

Versus

JETPUR NAGARPALIKA & 2 - Respondent(s)

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Appearance :

MR PM THAKKAR for Petitioner(s) : 1,
MR RR TRIVEDI for Respondent(s) : 1,
MR DIPEN DESAI ASST GOVERNMENT PLEADER for Respondent(s) : 2,
RULE NOT RECD BACK for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 05/10/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner has challenged the legality and validity of the order

passed by the Director of Municipality, State of Gujarat dated 6.11.1990 passed in Appeal No.36 of 1990 as well as the order passed by the Collector, Rajkot dated 11.6.1990 in permanently suspending the Resolution No.59 of the Special General Board Meeting of Jetpur Nagarpalika dated 2.6.1989.

2. Land admeasuring 114.26 sq.mt equivalent to 136.6 sq. Yards belong to Jetpur Nagarpalika which is situated just adjacent to the land of the petitioner came to be sold to the petitioner by Jetpur Nagarpalika and the decision was taken to sell the aforesaid land in question to the petitioner vide Resolution No.59 dated 2.6.1989 passed by the Special General Board of Jetpur Nagarpalika. The aforesaid resolution came to be challenged by one of the Members of the Jetpur Nagarpalika before the Collector, Rajkot under Section-258 of the Gujarat Municipalities Act and the Collector, Rajkot passed an interim order staying and / or suspending the aforesaid Resolution No.59 dated 2.6.1989 and thereafter, by order dated 21.6.90 the Collector,

Rajkot permanently suspended the Resolution No.59 dated 2.6.89 passed by the Jetpur Nagarpalika. It appears that being aggrieved and dissatisfied with the order passed by the Collector, Rajkot dated 21.6.90 in permanently suspending the Resolution No.59 dated 2.6.89 in exercise of powers under Section 258 of the Gujarat Municipalities Act passed by the Jetpur Nagarpalika, an appeal came to be preferred before the Director of Municipalities, State Government. However, there was delay of 11 days in preferring the said appeal and the Director of Municipalities dismissed the said appeal on the ground of limitation. Being aggrieved and dissatisfied with the order passed by the Director of Municipalities in dismissing the said appeal on the ground of limitation as well as the original order passed by the Collector, Rajkot dated 21.6.90 in permanently suspending the Resolution No.59 dated 2.6.89 passed by the Jetpur Nagarpalika allotting the land in question in favour of the petitioner, the petitioner has preferred the present Special Civil Application under Articles 226 and 227 of the

Constitution of India.

3. Shri Navin Pahva, learned advocate appearing on behalf of the petitioner has vehemently submitted that the Director of Municipalities ought not to have dismissed the appeal preferred by the Jetpur Nagarpalika on the ground of limitation. He has further submitted that even otherwise, the order passed by the Collector, Rajkot dated 21/6/90 is in breach of principles of natural justice as the petitioner was not heard. So far as challenge to the order passed by the Director of Municipalities in dismissing the appeal preferred by the Jetpur Nagarpalika on the ground of limitation is concerned, the petitioner cannot challenge the same as firstly the petitioner has not challenged the main order passed by the Collector before the Director of Municipalities and secondly, the said appeal was preferred by Jetpur Nagarpalika whose appeal came to be dismissed by the Director of Municipalities on the ground of limitation and Jetpur Nagarpalika has accepted the same. So far as submission and

contention on behalf of the petitioner that the order passed by the Collector, Rajkot dated 21.6.90 is in breach of principles of natural justice as the petitioner was not heard is concerned, in view of the fact that the present Special Civil Application is of the year 1991, instead of remanding the matter to the Collector, Rajkot, this Court has heard the petitioner on merits.

4. Shri Navin Pahva, learned advocate appearing on behalf of the petitioner is not in a position to satisfy this Court as to how the land in question could have been alloted and/or sold to the petitioner only. As held by the Collector, Rajkot, land in question is a public utility land and even if the same could have been permitted to be sold, then also, the same could not have been sold without any public auction. The Collector, Rajkot is justified in permanently suspending the Resolution No.59 dated 2.6.89 by which the land was alloted to the petitioner and/or sold to the petitioner as the same was done without holding any public auction. Under

the circumstance, there is no substance in the present Special Civil Application on merits and therefore, this Court is not inclined to remand the matter to the Collector, Rajkot.

5. For the reasons stated above, more particularly, when the land in question could not have been sold to the petitioner without holding any public auction by the Nagarpalika, the present Special Civil Application is required to be dismissed and the same is, accordingly, dismissed.

Rule is discharged. However, there will be no order as to costs. Ad-interim relief, if any, stands vacated.

(M.R.SHAH, J.)

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